

1 JOHN L. SLAFSKY, State Bar No. 195513  
 2 DAVID L. LANSKY, State Bar No. 199952  
 3 HOLLIS BETH HIRE, State Bar No. 203651  
 4 WILSON SONSINI GOODRICH & ROSATI  
 5 PROFESSIONAL CORPORATION  
 6 650 Page Mill Road  
 7 Palo Alto, CA 94304  
 8 Bus: (650) 493-9300  
 9 Fax: (650) 493-6811  
 10 jslafsky@wsgr.com  
 11 dlansky@wsgr.com  
 12 hhire@wsgr.com

13 Attorneys for Defendant/Counterclaimant  
 14 GODADDY.COM, INC.

15 UNITED STATES DISTRICT COURT  
 16  
 17 NORTHERN DISTRICT OF CALIFORNIA

18 PETROLIAM NASIONAL BERHAD, )  
 19 )  
 20 Plaintiff, )  
 21 )  
 22 vs. )  
 23 )  
 24 GODADDY.COM, INC., )  
 25 )  
 26 Defendant. )  
 27 )  
 28 )

CASE NO.: 09-CV-5939 PJH

**MEMORANDUM OF POINTS AND  
 AUTHORITIES IN OPPOSITION  
 TO PLAINTIFF'S MOTION FOR  
 PARTIAL SUMMARY JUDGMENT**

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Date: December 7, 2011  
 Time: 9:00 a.m.  
 Courtroom: 3

Honorable Phyllis J. Hamilton

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1 **STATEMENT OF ISSUES TO BE DECIDED**

2 1. Does a claim for contributory cybersquatting exist under the circumstances of this  
3 case?

4 2. If a claim exists for contributory cybersquatting under the circumstances of this  
5 case, what is the standard to be applied?

6 3. Has Petronas demonstrated that domain name forwarding is sufficiently distinct  
7 from the routing service provided by all domain name registrars to take it outside of the  
8 immunity for registrars under the Anti-Cybersquatting Consumer Protection Act, 15 U.S.C. §§  
9 1114 and 1125 (“ACPA”), and ensuing case law?

10 4. Does the undisputed evidence demonstrate that the non-party registrant of the  
11 domain name <petronastowers.net> (the “Disputed Domain”) registered or used the Disputed  
12 Domain with a bad faith intent to profit from Petronas’s trademark?

13 5. Assuming the non-party registrant engaged in cybersquatting, does the undisputed  
14 evidence demonstrate that the domain name registrar, Go Daddy, exercised direct monitoring and  
15 control over the means of cybersquatting?

16 6. Did Petronas’s notice of alleged trademark infringement amount to exceptional  
17 circumstances sufficient to impute knowledge of cybersquatting to Go Daddy?

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **I. INTRODUCTION**

20 Petronas seeks summary judgment on a single claim that, under the circumstances, does not  
21 exist. No defendant has ever been held liable for “contributory cybersquatting.” Far from the  
22 “well-established” case law Petronas claims to rely upon, there is not a single appellate-level  
23 decision recognizing the existence of a “contributory cybersquatting” claim, and only a few district  
24 courts have even considered such a claim at the pleading stage. In the context of trademark  
25 infringement, a proper reading of *Inwood Labs., Inc. v. Ives Labs., Inc.*, 456 U.S. 844 (1982), and  
26 its progeny makes clear that a claim for contributory liability exists only in the limited  
27 circumstances where a defendant intentionally induced another to infringe, continued to supply a  
28 product to one whom the defendant knew was engaged in infringement, or continued to supply

1 access to a venue to one whom the defendant knew or should have known was using the venue to  
2 sell infringing products. Petronas boldly seeks to extend this limited principle of secondary  
3 liability to a new realm, cybersquatting, but the facts of this lawsuit do not support any such  
4 extension of U.S. law.

5 In particular, Go Daddy’s conduct falls into none of the *Inwood Labs* categories – Go  
6 Daddy is not alleged to have induced infringement, it supplies a service not a product, and it does  
7 not supply a marketplace where infringing products are sold. Because Congress enacted the  
8 underlying statute, the ACPA, against the backdrop of limited circumstances permitting  
9 secondary liability, and Congress could have but did not include an expanded claim for  
10 contributory cybersquatting within the ACPA itself, it must be presumed that Congress did not  
11 intend to extend such liability. It would thus be unprecedented and improper for this Court to  
12 expand the scope of secondary liability in the aggressive manner sought by Petronas. It also  
13 would be contrary to the seminal holding of the Ninth Circuit in *Lockheed Martin Corp. v.*  
14 *Network Solutions, Inc.*, 194 F.3d 980 (9th Cir. 1999) (“*Lockheed*”), that, as this Court has  
15 already recognized, a domain name registrar offering registration and routing services is not  
16 subject to a claim for contributory infringement.

17 Petronas’s motion also must be denied because Go Daddy’s actions fall within the  
18 immunity provided to domain name registrars under the ACPA and the ensuing case law.  
19 Petronas’s emphasis in its papers on the distinction between registration and other basic registrar  
20 services is inapposite, as both categories are protected by the ACPA and related case law. The  
21 Ninth Circuit, in the *Lockheed* opinion that Congress intended to codify when it enacted the  
22 ACPA, has already concluded that domain name routing is a basic registrar service for which  
23 secondary liability will not lie. In this case, the undisputed evidence establishes that the service  
24 provided by Go Daddy – domain name forwarding – is merely a form of domain routing, and just  
25 like any other form of routing, is a basic registrar service shielded from liability.

26 Finally, even if Petronas’s novel claim for contributory cybersquatting were to apply to  
27 the facts of this case, and even if the Court were to conclude that the registrar immunity does not  
28 apply, Petronas’s narrowly targeted motion still would fail for lack of proof. Despite years of

1 litigation and extensive discovery, Petronas has wholly failed to come forward with evidence  
2 entitling it to judgment. The proof presented by Petronas simply fails to establish: (i) that the  
3 registrant registered or used the Disputed Domain with a bad faith intent to profit from  
4 Petronas's trademark; (ii) that Go Daddy exercised direct monitoring and control over the  
5 registrant's allegedly unlawful conduct; or (iii) that the notice of alleged infringement provided  
6 by Petronas created the type of "exceptional circumstances" necessary to impute knowledge of  
7 cybersquatting to Go Daddy. A failure of proof on any one of these elements dooms Petronas's  
8 motion; here, all three fail.

## 9 **II. COUNTER-STATEMENT OF FACTS**

10 Although Petronas's First Amended Complaint asserts three claims based on registration  
11 and forwarding of two different domain names, its Motion for Summary Judgment is limited to a  
12 single claim of contributory cybersquatting relating to a single domain name. The motion is  
13 directed at Go Daddy's failure to disable its forwarding service for the Disputed Domain between  
14 the time when Go Daddy received a notice from Petronas and the time, approximately two  
15 months later, when Go Daddy complied with an Order to transfer the Disputed Domain.

16 Counsel for Petronas sent an email identifying the Disputed Domain to Go Daddy's  
17 counsel in mid-June, 2010 in the context of settlement discussions. APP155.<sup>1</sup> Go Daddy's  
18 counsel responded the same day, pointing Petronas to the Uniform Dispute Resolution Policy  
19 ("UDRP"). *Id.* Petronas first submitted a trademark claim regarding the Disputed Domain to Go  
20 Daddy on July 7, 2010. APP092-95. Go Daddy responded the next day, indicating that because  
21 the website was not hosted by Go Daddy and because the Internet Corporation for Assigned  
22 Names and Numbers ("ICANN") and the UDRP prohibited registrars from becoming involved in  
23 domain name disputes, Petronas would have to pursue the dispute with the registrant through  
24 arbitration or the local court system. APP091. Petronas filed a Lanham Act *in rem* action  
25

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26 <sup>1</sup> Citations to Plaintiff's Appendix of Fed. R. Civ. P. 56(C)(1)(A) Materials In Support of  
27 Motion For Partial Summary Judgment will be in the form "APP \_\_\_." Citations to  
28 Memorandum of Points and Authorities in support of its Motion for Partial Summary Judgment  
will be in the form "Pl. Br. at \_\_\_." Citations to declarations will be in the form "[Declarant], [¶  
or Ex.] \_\_\_." Citations to deposition testimony will be in the form "([Witness], at \_\_\_)".



1 against the Disputed Domain on July 12, 2010 (APP077-83) and moved for an order transferring  
2 the domain name on August 10, 2010 (APP070-86). The order was granted on August 27, 2010  
3 (APP066-69) and Go Daddy transferred the Disputed Domain to Petronas three days later, on  
4 August 30, 2010 (Hanyen, ¶ 27).

5 Also pertinent to Petronas’s motion are the factual issues below: whether domain  
6 forwarding is a basic service offered by Go Daddy in its role as a domain name registrar;  
7 whether the Disputed Domain first became linked to a pornographic website following transfer  
8 from another registrar to Go Daddy; and whether Go Daddy ignored Petronas’s notice regarding  
9 the Disputed Domain. As to these issues, Petronas makes factual assertions that are  
10 unsupported – and are, in fact, contradicted – by the evidence of record. Rather than creating  
11 “issues of fact” precluding summary judgment, these deficiencies expose the absence of  
12 evidence supporting Petronas’s claims.

13 **A. GO DADDY DOES NOT PROVIDE FORWARDING FOR DOMAINS**  
14 **REGISTERED WITH OTHER REGISTRARS**

15 Seeking to avoid the broad registrar immunity afforded by the ACPA, Petronas argues  
16 that forwarding is somehow unrelated to domain name registration or maintenance because Go  
17 Daddy purportedly offers forwarding to hosting customers who have their domain names  
18 registered elsewhere. *See* Pl. Br. at 4. This is simply wrong and is unsupported by evidence. To  
19 the contrary, the evidence establishes unequivocally that Go Daddy’s forwarding service is only  
20 available for domains registered with Go Daddy. *See* Munson, ¶ 10 (“Go Daddy can only  
21 provide domain name forwarding services to domain names for which Go Daddy is the  
22 registrar”); Lansky, Ex. 1 (Roling, 48:14-18 (confirming that “hosting customers whose domain  
23 names are registered elsewhere . . . cannot use Go Daddy’s domain name forwarding service”)).

24 The documents cited by Petronas are not contradictory. Petronas notes that Go Daddy  
25 hosting customers can have an unlimited number of “External Domains” forwarded to websites  
26 hosted by Go Daddy. Pl. Br. at 4. However, as stated in the interrogatory response cited by  
27 Petronas, “Go Daddy does not provide any services for the external domains themselves.”  
28 APP016, 7:11. In other words, the hosting customer must have the external domains forwarded

1 by the registrar of such domains, not by Go Daddy. Petronas similarly misconstrues a Go Daddy  
2 help article explaining how to “Redirect URLs with Your Hosting Account.” Pl. Br. at 4;  
3 APP046. None of the witnesses to whom this document was shown testified that Go Daddy  
4 could forward domains registered elsewhere. As noted above, a Go Daddy witness, Mr. Roling,  
5 explicitly testified to the contrary. Lansky, Ex. 1 (Roling, 48:14-18). Further, such URL  
6 redirects are only available for domains that are registered *with Go Daddy* and are in the  
7 customer’s Go Daddy account. See Brown, ¶¶ 2-4, & Exs. 1, 2.

8 **B. THE DISPUTED DOMAIN HAD BEEN FORWARDED FOR YEARS**  
9 **BEFORE IT WAS REGISTERED WITH GO DADDY**

10 Petronas also inaccurately claims that “[a]ll of the evidence in the record . . . supports the  
11 inference that the domain name PETRONASTOWERS.NET only became linked to the  
12 pornographic website when GoDaddy began providing its domain name forwarding service on  
13 May 2, 2009.” Pl. Br. at 9. A search of public records reveals that the Disputed Domain had  
14 been forwarded to a pornographic website since mid-2004, years before it was even registered  
15 with Go Daddy. Slafsky, ¶ 6 & Exs. 1-5. The Disputed Domain was transferred from a different  
16 registrar to Go Daddy on April 1, 2007 and the registrant set up forwarding that day using Go  
17 Daddy’s online dashboard. Roling, ¶ 15 & Ex. 4.<sup>2</sup>

18 **C. GO DADDY ACTED PROMPTLY AFTER BEING NOTIFIED OF THE**  
19 **DISPUTED DOMAIN**

20 Petronas contends that Go Daddy “ignored” the information Petronas provided and  
21 “refused to investigate” its claims regarding the Disputed Domain. Pl. Br. at 11-12. Petronas’s  
22 contention again is inconsistent with the undisputed evidence of record.

23  
24  
25 <sup>2</sup> Petronas cites to Go Daddy’s interrogatory response (APP147 at 16:19-22) in support of  
26 the May 2, 2009 date. Pl. Br. at 9:2-5. The cited interrogatory response does not contain that or  
27 any other date. APP147 at 16:19-22. A different document, APP035, does reference May 2,  
28 2009 as the date the registrant implemented a forwarding option through Go Daddy’s online  
dashboard for www.petronastower.net (*not* the domain at issue in Petronas’s motion). As  
detailed above, that is not the first time that domain name was forwarded. Regardless, the  
difference in dates is not material.

1 The documents cited in Petronas’s Appendix establish that Go Daddy promptly  
2 investigated and responded to Petronas’s notification regarding the Disputed Domain. Petronas  
3 submitted a formal trademark claim to Go Daddy regarding the domain name on July 7, 2010.  
4 APP092. Go Daddy investigated, determined that the domain name was registered with Go  
5 Daddy but hosted elsewhere, and responded the next day, July 8, 2010. APP091.

6 As Go Daddy explained in its response (and as detailed in Go Daddy’s Motion for  
7 Summary Judgment), Go Daddy’s response was intended to comply with obligations to ICANN,  
8 pursuant to the UDRP. *Id.* Under the UDRP, registrars are expected, other than in exceptional  
9 circumstances, to maintain the status quo during a domain name dispute until receipt of  
10 directions from the registrant, an order from a court or arbitral tribunal, or the decision of an  
11 administrative panel. Hanyen, Ex. 4 (UDRP) at ¶¶ 3, 7; Slafsky, Ex. 12 (Bilunes, 9:1-19); *id.*,  
12 Ex. 11 (Hanyen (10/20/2011), 16:3-17). Accordingly, Go Daddy told Petronas: “ICANN, the  
13 managing body of internet . . . specifically prohibits domain registrars from becoming involved  
14 in disputes over domain ownership in their Uniform Domain Name Dispute Resolution Policy.  
15 Any disputes over the ownership or wording of the domain name itself will need to be sent either  
16 to the owner, or through an arbitration forum, or the local court system.” APP091. As a  
17 courtesy, Go Daddy also provided information regarding the host of the website about which  
18 Petronas was complaining. *Id.* Further, as soon as Petronas notified Go Daddy that Petronas had  
19 initiated a Lanham Act *in rem* proceeding against the Disputed Domain, Go Daddy, in  
20 accordance with UDRP, locked the Disputed Domain. *See* Lansky, Ex. 2 at 1.

21 Thereafter, on August 27, 2010, Go Daddy received an Order directing it to transfer the  
22 Disputed Domain name to Petronas. Hanyen, ¶ 27. Three days later, on August 30, 2010, Go  
23 Daddy complied with the Order and transferred ownership of the registration to Petronas’s  
24 counsel. *Id.* Thus, Go Daddy transferred the domain name to Petronas as soon as it was able to  
25 do so – approximately two months after Petronas submitted its trademark claim.

1 **III. ARGUMENT**

2 **A. CONTRIBUTORY LIABILITY DOES NOT APPLY TO A DOMAIN**  
3 **NAME REGISTRAR MERELY PROVIDING DOMAIN FORWARDING**  
4 **SERVICES**

5 First and foremost, Petronas cannot obtain summary judgment on its claim for  
6 “contributory cybersquatting,” because a claim for contributory trademark cybersquatting does  
7 not exist under the circumstances of this case. No defendant has ever been held liable for  
8 “contributory cybersquatting,” and there is no basis for the Court to create such precedent in this  
9 action.

10 The case law concerning traditional principles of contributory trademark infringement is  
11 instructive. A claim for contributory trademark infringement has been recognized under only  
12 limited circumstances. In *Inwood Lab., Inc. v. Ives Lab., Inc.*, 456 U.S. 844 (1982), the Supreme  
13 court explained that contributory trademark infringement occurs when a manufacturer or  
14 distributor either intentionally induces another to infringe another’s trademark, or continues to  
15 supply its product to another with knowledge or reason to know that the product is being used to  
16 infringe another’s trademark. *Id.* at 854. Since then, only a small number of cases have  
17 permitted a claim for contributory trademark infringement to proceed where the defendant does  
18 not supply a product.

19 In *Hard Rock Cafe Licensing Corp. v. Concession Serv., Inc.*, 955 F.2d 1143 (7th Cir.  
20 1992), the Seventh Circuit considered whether the doctrine of contributory trademark  
21 infringement as set forth in *Inwood Labs* could apply to a defendant that does not manufacture or  
22 distribute a good that is palmed off as made by someone else, but instead operates a flea market  
23 where counterfeit goods are sold. *See id.* at 1148-9. The court looked to the common law of  
24 torts, which makes landlords and licensors of real estate responsible for torts committed by those  
25 on the premises where they know or have reason to know of the tortious conduct. Because the  
26 common law imposed the same duty on the defendant that the Supreme Court in *Inwood Labs*  
27 imposed on manufacturers and distributors, the court concluded that a claim for contributory  
28 trademark infringement existed under the circumstances. *See id.* at 1149. The Ninth Circuit  
subsequently followed *Hard Rock* and recognized a contributory trademark infringement claim

1 against a swap meet operator that rented space to vendors whom it knew were selling counterfeit  
2 recordings on the premises. See *Fonovisa Inc. v. Cherry Auction, Inc.*, 76 F.3d 259, 265 (9th Cir.  
3 1996) (“while trademark infringement liability is more narrowly circumscribed than copyright  
4 infringement, the courts nevertheless recognize that a company ‘is responsible for the torts of  
5 those it permits on its premises knowing or having reason to know that the other is acting or will  
6 act tortiously’”) (quoting *Hard Rock*, 955 F.2d at 1149, quoting Restatement (Second) of Torts  
7 § 877(c) & cmt. D (1979)).

8 More recently, courts have applied the *Inwood Labs* test to Internet companies that  
9 effectively rent online space to those selling counterfeit goods. See *Louis Vuitton Malletier, S.A.*  
10 *v. Akanoc Solutions, Inc.*, -- F.3d--, 2011 WL 4014320, at \*3 (9th Cir. Sept. 9, 2011) (affirming  
11 contributory liability of service provider that physically hosted websites on its servers, which  
12 Court found to be “Internet equivalent of leasing real estate”); *Tiffany (NJ) Inc. v. eBay Inc.*, 600  
13 F.3d 93, 105-08 (2d Cir. 2010) (eBay operated on-line marketplace and therefore exercised  
14 sufficient control over sales of infringing products for application of *Inwood* to service).  
15 However, courts have declined to extend the *Inwood Labs* framework to service providers that  
16 do not act as the equivalent of a landlord, even if the service provided is “critical” for another to  
17 engage in infringement. See *Perfect 10, Inc. v. Visa Int’l Serv., Ass’n*, 494 F.3d 788, 807 (9th  
18 Cir. 2007) (allegations that defendant service provider could stop or reduce infringing conduct by  
19 withholding its services upon notice of infringement failed to state claim for contributory  
20 infringement because service provider did not exercise type of monitoring and control  
21 contemplated by *Inwood Labs* and its progeny).

22 Petronas assumes the *Inwood* framework applies to cybersquatting, but it does not  
23 contend that Go Daddy induced cybersquatting, or that Go Daddy manufactures or distributes a  
24 product, and it fails to explain how Go Daddy is in any way the equivalent of a landlord with any  
25 duty concerning tortious conduct on its premises. Nowhere does Petronas explain why this  
26 Court should expand the *Inwood* framework to cyberquatting claims, which do not involve the  
27 sale or distribution of infringing products in a marketplace made available by the defendant –  
28 conduct that is relatively easy to police – but instead depend upon the intent of a third party.

1           The Supreme Court has made clear that when Congress creates a tort-like action, it does  
2 so with knowledge of existing rules for secondary liability, and therefore Courts should assume  
3 that absent contrary expression in the statute, Congress intended those same rules to apply to the  
4 newly created claim. *See Meyer v. Holley*, 537 U.S. 280, 285 (2003). Where Congress says  
5 nothing about extending traditional rules of secondary liability, a court errs by extending  
6 secondary liability beyond the “traditional principles.” *See id.* at 286-7 (“Congress’ silence,  
7 while permitting an inference that Congress intended to apply *ordinary* background tort  
8 principles, cannot show that it intended to apply an unusual modification of those rules.”)  
9 (emphasis in original).

10           Here, Congress enacted the ACPA in 1999 against the backdrop of contributory  
11 trademark liability limited only to the narrow circumstances described above. The ACPA itself  
12 makes no mention of contributory liability, and the legislative history shows that far from  
13 seeking to expand the scope of traditional contributory trademark infringement vis-à-vis domain  
14 name registrars, Congress sought to codify the case law immunizing registrars from secondary  
15 liability. *See* S.Rep. 106-140, at 11. Thus, the Court should not expand the scope of traditional  
16 contributory liability and apply it to cybersquatting, where, as here, there is no allegation that the  
17 defendant induced infringement, manufactured or delivered a product, or leased or rented space  
18 at a marketplace where infringing products are sold. *See Meyer*, 537 U.S. at 285-87 (Ninth  
19 Circuit erred when it applied secondary liability beyond traditional principles to statutory claim).

20           Indeed, the Ninth Circuit has already rejected application of contributory liability under  
21 *Inwood Labs* to a claim against the provider of domain name registration and routing services.  
22 *See Lockheed*, 194 F.3d at 985 (“Such a stretch would reach well beyond the contemplation of  
23 *Inwood Lab.* and its progeny.”). The *Lockheed* court specifically addressed a contributory  
24 trademark infringement claim against a domain name registrar. *Id.* at 982-83. It affirmed the  
25 district court’s grant of summary judgment to the registrar because domain name registration and  
26 routing is a service, rather than a product, and a registrar that provides routing does not exercise  
27 the type of direct control and monitoring that would justify extension of *Inwood Labs* to this  
28

1 context. *See id.* at 985. In so holding, the Court compared the role of the registrar to that of the  
2 United States Postal Service:

3 [W]hen an Internet user enters a domain-name combination, [the registrar]  
4 translates the domain-name combination to the registrant's IP Address and routes  
5 the information or command to the corresponding computer. Although [the  
6 registrar's] routing service is only available to a registrant who has paid [the  
7 registrar's] fee, [the registrar] does not supply the domain-name combination any  
8 more than the Postal Service supplies a street address by performing the routine  
9 service of routing mail.

7 *Id.* at 984-85.

8 The facts here are virtually identical and mandate the same result. Go Daddy provided  
9 registration and routing services to the registrant of the Disputed Domain, who used those  
10 services to register a domain name containing Petronas's mark, and to route the Disputed  
11 Domain to a third-party computer hosting a website. As in *Lockheed*, Go Daddy exercised no  
12 control over the domain-name combination selected by the registrant. Nor did Go Daddy  
13 exercise control over the website to which the registrant routed the Disputed Domain. Go  
14 Daddy, like a taxi that takes someone to a flea market where infringing good are sold, merely  
15 delivered Internet users to a location on the Internet specified by the registrant. This service  
16 "does not entail the kind of direct control and monitoring required to justify an extension of the  
17 'supplies a product' requirement." *Lockheed*, 194 F.3d at 985. Because Go Daddy neither  
18 induces cybersquatting, nor supplies a product, and because its registration and forwarding  
19 services are nothing like the leasing of real estate that would justify application of *Inwood Labs*,  
20 Petronas's claim for contributory cybersquatting is not cognizable.

21 **B. GO DADDY IS IMMUNE FROM CONTRIBUTORY LIABILITY UNDER**  
22 **THE ACPA AND ENSUING CASE LAW**

23 Petronas's motion for summary judgment also must be denied because Go Daddy is  
24 immune from any ACPA claim directed at its conduct as a domain name registrar. Petronas  
25 acknowledges, as it must, that the ACPA and the case law provide immunity to registrars for  
26 their conduct in registering and maintaining a domain name. *See* Pl. Br. at 2 (citing *Lockheed*,  
27 194 F.3d at 984. Petronas then goes on to argue that a registrar's immunity applies only to the  
28 discrete act of registering a domain name. *See id.* Because, according to Petronas, the discrete

1 act of registering a domain name is distinct from domain forwarding, the registrar’s immunity  
2 does not apply. This argument is specious because the registrar immunity is not limited to the  
3 discrete act of registering a domain name.

4 Rather, the ACPA immunity applies to all conduct engaged in by a registrar functioning  
5 as a registrar. *See, e.g., Baidu, Inc. v. Register.com, Inc.*, 760 F. Supp. 2d 312, 320-21 (S.D.N.Y.  
6 2010) (recognizing immunity applies not only to registration but also to conduct amounting to  
7 subsequent maintenance of domain name); *Solid Host, NL v. NameCheap, Inc.*, 652 F. Supp. 2d.  
8 1092, 1105 (C.D. Cal. 2009) (“where the record indicates that a defendant did nothing more than  
9 act as a registrar, no liability under § 1125(d) will lie”); *Lockheed Martin Corp. v. Network*  
10 *Solutions, Inc.*, 141 F. Supp. 2d 648, 655 (N.D. Tex. 2001) (“*Lockheed IP*”) (finding ACPA  
11 inapplicable to company that registered domain names and linked them with IP numbers of  
12 domain name servers connecting domain names to hosting web sites).

13 Indeed, the plain language of the statutory immunity refers to “registration *or maintenance*  
14 of a domain name.” 15 U.S.C. § 1114(2)(D)(iii) (emphasis added). This provision codified cases  
15 holding domain name registrars not liable for trademark infringement when performing the  
16 functions of registrars. *See S. Rep. 106-140, at 11 & n.11 (1999)*. The Ninth Circuit’s *Lockheed*  
17 decision, in particular, makes clear that such registrar functions includes domain name routing.  
18 *See Lockheed*, 194 F.3d 980 (9th Cir. 1999).

19 In *Lockheed*, the Ninth Circuit held that the registrar defendant was not liable for  
20 contributory infringement based on its registration of domain names (including variations on the  
21 plaintiff’s marks) and routing of those domain names to websites created by the registrant. *See*  
22 *id.* at 982-85. It found a registrar’s role in routing domain names to websites comparable to that  
23 of the U.S. Postal service, and agreed with the District Court that such function was part of the  
24 registration service. *See id.* at 984-85. Thus, Petronas’s emphasis on the notion that *registering*  
25 a domain is different than *forwarding* a domain (Pl. Br. at 2) is misplaced. The act of initially  
26 registering, or obtaining, a domain *is* different from forwarding (or otherwise resolving) a  
27 domain, but that does not mean that forwarding is not a basic registrar service. Rather, as this  
28 Court has already recognized, the pertinent inquiry is whether Go Daddy’s forwarding service “is



1 substantially similar to the ‘routing’ service offered by the [defendant] in *Lockheed*.” Dkt. No.  
2 67, at 4. If it is, “then Petronas will not succeed in its claim of contributory infringement, let  
3 alone the claim of infringement.” *Id.*

4 Numerous fact witnesses testified that domain forwarding is a form of routing. Lansky,  
5 Ex. 3 (Anderson, 8:1-2 (“Domain name forwarding directs a domain name to a specific URL.  
6 It’s a type of routing.”), 10:12-11:1, 67:10-12); Roling, ¶¶ 2 (“Go Daddy does not charge  
7 customers for domain forwarding, but rather offers this routing option as part of its registration  
8 services”), 12; Munson, ¶ 9 (“To an internet user, there is no distinction between resolution to a  
9 website through routing and resolution through forwarding”). Several also testified that domain  
10 forwarding is provided for free, and as part of the overall registration services. *See, e.g.* Lansky,  
11 Ex. 4 (Hertz, 14:4-17); Roling, ¶ 2. Indeed, the recognition of forwarding as a basic registrar  
12 service is echoed throughout the record, as well as by the three *amici curiae* who filed briefs in  
13 support of Go Daddy’s Motion for Summary Judgment. *See, e.g.* Lansky, Ex. 3 (Anderson,  
14 19:12-24); Roling, ¶ 2; Brief of *Amicus Curiae* Enom, Inc., pp. 1 (“Domain name forwarding is a  
15 standard feature provided by eNom, GoDaddy and most other registrars.”), 4; Brief of *Amici*  
16 *Curiae* Network Solutions, LLC and Register.com, Inc., pp. 1, 5, 6 (“Network Solutions and  
17 Register.com consider the provision of routing information in connection with a domain name to  
18 be an essential function of the registration and maintenance processes – without it, a domain  
19 name is not functional.”).

20 Moreover, countless on-line sources refer interchangeably to “forwarding” and “routing,”  
21 or its commonly used synonyms: “pointing” or “directing.” For example, PC Mag defines  
22 “domain forwarding” as “redirecting requests on the Internet to a different Internet address. For  
23 example, domain forwarding allows multiple domain name to be registered, all of which point to  
24 the same Web site.”

25 [http://www.pcmag.com/encyclopedia\\_term/0,2542,t=domain+forwarding&i=41681,00.asp](http://www.pcmag.com/encyclopedia_term/0,2542,t=domain+forwarding&i=41681,00.asp).

26 Even Domain Names for Dummies explains that domain name forwarding (listed here as “URL  
27 Forwarding”) is equivalent to routing or pointing to a domain name:

28 Many registrars provide a service that links your new domain name to your

1 preexisting Web site, so that traffic to your new address will be automatically  
2 forwarded to that URL. You can even choose to have numerous domain names  
3 linked to the same Web site. So, for example, if your company has changed names,  
4 you can make sure that people who know you by your new name and those who  
know you by your old name will all end up in the same place, no matter which  
domain name they use.

5 Domain Names for Dummies, by GreatDomains.com with Susan Wels at 56 (2001).

6 Courts also equate forwarding (the process of routing to an existing website) with  
7 “rerouting” or “re-directing.” *See, e.g., LCW Auto. Corp. v. Restivo Enters.*, No. SA-04-CA-  
8 0361-XR, 2004 WL 2203440, at \*1, n.2 (W.D. Tex. Sept. 24, 2004) (noting that multiple  
9 websites “re-route the user to Defendant’s principal website.”); *Halo Mgmt., LLC v. Interland,*  
10 *Inc.*, 308 F. Supp. 2d 1019, 1024 (N.D. Cal. 2003) (“As a part of its business practices, Interland  
11 employs the web address ‘bluehalo.com,’ often redirecting visitors to the ‘bluehalo.com’ site to  
12 Interland’s corporate homepage (‘interland.com’.”); *Super-Krete Int’l, Inc. v. Sadleir*, 712 F.  
13 Supp. 2d. 1023, 1032 (C.D. Cal. 2010) (“Defendants registered the domain name  
14 <Supercrete.com> in 1999 and have since used the domain to reroute web viewers to Concrete  
15 Solutions’ primary website.”); *K.S.R. XRay Supplies, Inc. v. Southeastern X-Ray, Inc.*, No. 09-  
16 81454-CIV, 2010 WL 4317026, at \*2 (S.D. Fla. Oct. 25, 2010) (“Greene conducts SXI’s  
17 business through the website located at XraySUPERCENTER.COM . . . Greene’s additional  
18 domains include X-RAYSUPERCENTER.COM, SOUTHEASTERNXRAY.COM,  
19 DISCOUNTX-RAY.COM, and several others, which are redirected, or ‘pointed’ to the  
20 XRaySUPERCENTER main web site.”); *McSpadden v. Caron*, No. 03-CV-6285 CJS., 2004  
21 WL 2108394, at \*5 (W.D.N.Y. Sept. 20, 2004) (“Caron and Wallace began to use the  
22 usamedicine.com domain name to ‘point’ customers to their discountmedsonline.com website.  
23 That is, persons attempting to use the usamedicine.com website were automatically re-directed to  
24 the discountmedsonline.com website . . . [plaintiff] also alleged that one or all of the defendants  
25 altered the americanlifestyle.com website to cause visitors to that site to be re-routed to the  
26 nicepriceusa.com website”).

27 In light of this overwhelming evidence, Petronas’s attempts to cast forwarding as  
28 something other than a basic registrar service do not stand up to scrutiny. In particular, Petronas

1 unduly relies upon an out-of-context quote from Ron Hertz, Go Daddy’s Vice President and  
2 Corporate Controller, for the proposition that registration is different than forwarding (Pl. Br. at  
3 2). It is, but that does not mean forwarding is anything but a basic registrar function. As  
4 Mr. Hertz explained, “[p]art of Go Daddy’s domain registration services is giving the registrant  
5 the ability to manage a domain’s DNS which essentially is allowing you to point that domain . . .  
6 to any particular domain, any DNS servers that you would like.” Lansky, Ex. 4 (Hertz, 14:4-10).  
7 Mr. Hertz specifically acknowledged that Go Daddy’s registration services include (at no extra  
8 charge) giving the customer “the ability to forward” domain names. *Id.* at 14:11-17. Further, it  
9 is irrelevant that Go Daddy did not offer forwarding during the first few months the Company  
10 was in business, between November 2000 and April 2001. Pl. Br. at 3. It goes without saying  
11 that the Internet has evolved dramatically over the past decade, as has the scope of services  
12 provided by domain name registrars. Go Daddy itself provides forwarding services to  
13 approximately 8.2 million domain names under its management. Roling, ¶ 13.

14         Granted, not all customers want their domains forwarded to an existing Web page.  
15 Consequently, as Petronas correctly points out, it is possible to perform registration and  
16 maintenance of a domain name without forwarding that domain. Pl. Br. at 3-4. But the mere  
17 fact that not every customer chooses to use forwarding does not make it any less of a basic  
18 registrar service, just as the fact that not everyone uses cream or sugar in their coffee does not  
19 make the provision of those condiments any less of a basic service at a coffeehouse.

20         Petronas presents *no evidence* that domain forwarding is anything but a form of domain  
21 routing.<sup>3</sup> Because it is undisputed that forwarding is merely a form of routing, and the Ninth  
22 Circuit has already concluded that routing is part of the basic registration service shielded from

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23  
24         <sup>3</sup> Because Petronas has not submitted any evidence that forwarding is anything but a type of  
25 routing, it may not do so with its reply papers. *See, e.g., United States v. Patterson*, 230 F.3d  
26 1168, 1172 (9th Cir.2000) (arguments and evidence presented for the first time in reply waived);  
27 *American Traffic Solutions, Inc. v. Redflex Traffic Sys. Inc.*, No. cv-08-2051-PHX-FJM, 2009  
28 WL 775104, at \*1 (D. Ariz. Mar.20, 2009) (“The remedy for dealing with new evidence first  
appearing in a reply is that we will not consider issues or evidence raised for the first time in  
plaintiff’s reply.”); *Wallace v. Countrywide Home Loans, Inc.*, No. SACV 08-1463, 2009 WL  
4349534 AT \*7 (C.D. Cal. Nov. 23, 2009) (“The opposing party should not have to incur the  
cost and effort of additional filings-a motion for leave to file a sur-reply, and the sur-reply itself-  
because the movants deliberately, or more likely inadvertently, held back part of their case.”).

1 liability, Go Daddy cannot be contributorily liable for providing this service to the alleged  
2 cybersquatter.

3 **C. PETRONAS HAS FAILED TO ADDUCE SUFFICIENT EVIDENCE TO**  
4 **SUPPORT ITS CONTRIBUTORY CYBERSQUATTING CLAIM**

5 In any event, Go Daddy still cannot be found liable for contributory cybersquatting  
6 because there is insufficient evidence to support such a claim. Summary judgment is only proper  
7 where “there is no genuine dispute as to any material fact and the movant is entitled to a  
8 judgment as a matter of law.” Fed. R. Civ. P. 56(a). In ruling on a motion for summary  
9 judgment, the court must draw all reasonable inferences in favor of the non-moving party,  
10 including questions of credibility and of the weight to be accorded particular evidence. *Masson*  
11 *v. New Yorker Magazine, Inc.*, 501 U.S. 496, 520 (1991) (citing *Anderson v. Liberty Lobby, Inc.*,  
12 477 U.S. 242, 255 (1986)); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 588  
13 (1986); *T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir.  
14 1987). It is the Court’s responsibility to determine whether the undisputed material facts  
15 together with any specific evidence provided by the nonmoving party are such that a reasonable  
16 jury could find for the nonmoving party. *See, e.g., T.W. Elec.*, 809 F.2d at 631. In such  
17 circumstances, summary judgment must be denied. *See, e.g., Anderson*, 477 U.S. at 248. Here,  
18 and as set forth in Go Daddy’s separate Motion for Summary Judgment, the lack of evidence in  
19 support of Petronas’s claim mandates summary judgment – in favor of Go Daddy.

20 **1. If A Contributory Cybersquatting Claim Could Be Asserted, A**  
21 **Heightened Showing of “Exceptional Circumstances” Would Be**  
22 **Required**

23 The elements of a claim for contributory cybersquatting under any circumstances are far  
24 from “well settled,” despite Petronas’s assertion to the contrary. Pl. Br. at 5. No appellate court  
25 has recognized such a claim. The recent Ninth Circuit opinion Petronas relies upon sets forth the  
26 requirements for traditional trademark contributory liability, and does not in any way address a  
27 claim under the ACPA. *See Louis Vuitton Malletier, S.A. v. Akanoc Solutions, Inc.*, --F.3d--,  
28 2011 WL 4014320, at \*3 (9th Cir. Sept. 9, 2011). The only case cited by Petronas that addresses  
a claim for contributory cybersquatting is *Solid Host, NL v. NameCheap, Inc.*, 652 F. Supp.2d

1 1092 (C.D. Cal. 2009), which in turn relied upon *Ford Motor Co. v. Greatdomains.com, Inc.*,  
2 177 F. Supp. 2d 635 (E.D. Mich. 2001). But neither of these cases address whether a court could  
3 properly extend the scope of a contributory infringement claim to the context of cybersquatting.  
4 Moreover, each of the cases, decided at the pleading stage, make clear that the standard to  
5 establish a contributory cybersquatting claim would have to be higher than that applied to  
6 contributory infringement claims:

7 [B]ecause the ACPA requires a showing of ‘bad faith intent’ – a subjective element  
8 not required under traditional infringement, unfair competition, or dilution claims –  
9 the standard would be somewhat heightened. For example, it would be insufficient  
10 that an entity such as [a registrar] were merely aware that domain names identical  
11 or similar to protected marks were being sold over its website. Rather, because  
12 legitimate uses of others [*sic*] marks are protected under the ACPA, ***a plaintiff  
would have to demonstrate that the “cyber-landlord” knew or should have known  
that its vendors had no legitimate reason for having registered the disputed  
domain names in the first place.*** Because an entity such as [a registrar] generally  
could not be expected to ascertain the good or bad faith intent of its vendors,  
contributory liability would apply, if at all, in only exceptional circumstances.

13 *Ford Motor*, 177 F. Supp. 2d at 647 (emphasis added); *accord Solid Host*, 652 F. Supp. 2d at  
14 1114; *see also, Microsoft Corp. v. Shah*, No. C10-0653 RSM, 2011 WL 108954, at \*2 (W.D.  
15 Wash. Jan. 12, 2011).

## 16 2. There Is No Finding of Direct Cybersquatting

17 A prerequisite to contributory infringement is a finding of direct infringement. *See, e.g.*,  
18 *Georgia-Pacific Consumer Prod. LP v. Myers Supply, Inc.*, No. 6:08-cv-6086, 2009 WL  
19 2192721, \*4 (W.D. Ark. July 23, 2009) (“the second element of contributory infringement is  
20 actual infringement”), *aff’d* 621 F.3d 771, 774 (8th Cir. 2010) (upholding summary judgment of  
21 no contributory infringement where underlying behavior did not constitute direct infringement).  
22 Here, there has been no finding of cybersquatting, and Petronas’s attempt to show cybersquatting  
23 is inadequate.

24 It is well-established that “[a] finding of bad faith” is an essential prerequisite to finding  
25 an ACPA violation.” *Interstellar Starship Servs., Ltd. v. Epix, Inc.*, 304 F.3d 936, 946 (9th Cir.  
26 2002). Whether “bad faith” exists is highly fact dependent, and requires a thorough review of  
27 the unique circumstances of each case. *See id.* at 946-47; *Anlin Indus., Inc. v. Burgess*, 301 F.  
28 App’x. 745, 746 (9th Cir. 2008). The evidence that Petronas has submitted falls far short of

1 supporting a finding that the registrant acted with a bad faith intent to profit from Petronas's  
2 trademark. 15 U.S.C. § 1125.

3 Petronas points only to minimal evidence in support of some factors considered when  
4 determining bad faith under ACPA, and Petronas's evidence is not always what it claims. First,  
5 Petronas claims that the registrant had no intellectual property rights in the Disputed Domain, but  
6 merely points to evidence that the registrant did not respond to Petronas's letters. Pl. Br. at 7.  
7 Second, Petronas claims the registrant "diverted customers from Petronas's online locations," but  
8 only cites to the Manokaran Declaration, which merely states that Petronas uses certain websites;  
9 it does not provide any proof that any customers actually were diverted from Petronas's websites  
10 to the registrant's, and, in fact, Petronas's corporate representative testified that no customers  
11 have complained about any such diversion. APP088 (Manokaran Decl. at ¶¶ 4, 5); Slafsky Ex. 9  
12 (Gaik, 55:5-16). Third, Petronas claims that the registrant registered "multiple domain names  
13 which the person [Registrant] knew are identical or confusingly similar to marks of others that  
14 are distinctive at the time of registration." Pl. Br. at 7. But Petronas points to only two of many  
15 domain names registered by the registrant as containing distinctive marks, and further provides  
16 no evidence of what the registrant "knew" about the word "Petronas" at the time of registration.  
17 See Hanyen Ex. 7 (pages of account information reflecting numerous domains registered by  
18 registrant with Go Daddy). Fourth, Petronas presents no evidence one way or the other on  
19 factors 3 (prior use), 6 (offer to sell the domain name), or 7 (false contact information).

20 Moreover, these statutory factors are merely permissive, *Interstellar*, 304 F.3d at 946-47,  
21 and the ACPA provides that bad faith "shall not be found in any case in which the court  
22 determines that the person believed and had a reasonable grounds to believe that the use of the  
23 domain name was a fair use or otherwise lawful," 15 U.S.C. § 1125(d)(1)(B)(ii). As Petronas  
24 did not seek any discovery from the registrant of the Disputed Domain, there is simply no way  
25 for this Court to determine what the registrant believed at the time of registration, and thus  
26 whether there was a bad faith intent to profit from Petronas's mark. The minimal evidence  
27 presented by Petronas fails to demonstrate that the registrant registered and used the Disputed  
28 Domain with a bad faith intent to profit from Petronas's mark, and thus the contributory

1 cybersquatting claim must fail as a matter of law. *See, e.g., Competition Specialties, Inc. v.*  
2 *Competition Specialties, Inc.*, 87 F. App'x. 38, 42-43 (9th Cir. 2004) (district court properly  
3 granted defendant judgment as a matter of law on ACPA claim despite evidence that defendant  
4 used domain names containing plaintiff's mark).

5 **3. There Is No Evidence That Go Daddy Monitored and Controlled The**  
6 **Instrumentality of Cybersquatting**

7 Even assuming the registrant of the Disputed Domain was engaged in cybersquatting, Go  
8 Daddy cannot be held liable as a contributory cybersquatter because it did not and could not  
9 monitor and control the unlawful conduct. Petronas misunderstands the nature of a  
10 cybersquatting claim when it argues that domain forwarding is the instrumentality used by the  
11 registrant to engage in cybersquatting. Pl. Br. at 9. The first requirement of a cybersquatting  
12 claim is that the defendant have "a bad faith intent to profit from" someone else's trademark. 15  
13 U.S.C. § 1125(d)(1)(A)(i). Here, there is no evidence that Go Daddy had any control over the  
14 registrant's intent when he registered a domain name that included the Petronas mark and then  
15 forwarded it to a pornographic website. *Compare Microsoft*, 2011 WL 108954, at \*2 (plaintiff  
16 stated claim for contributory cybersquatting based on allegations that defendant induced  
17 unlawful conduct by providing instruction on how to engage in cybersquatting). There is no  
18 evidence that Go Daddy had any input into the registrant's selection of the domain name  
19 combination and decision to route the Disputed Domain to a pornographic website. And there is  
20 no evidence that Go Daddy had any control over the operation or content of the website to which  
21 the registrant caused the Disputed Domain to be routed.

22 Moreover, Petronas is simply wrong that domain forwarding is the instrumentality of  
23 cybersquatting. If the registrant of the Disputed Domain engaged in cybersquatting, he did so  
24 because, with a bad faith intent to profit from the Petronas mark, he both selected a domain name  
25 that included the Petronas mark and used domain forwarding in an attempt to divert Internet  
26 users from Petronas's website to another website. The use of domain forwarding in and of itself  
27 is not cybersquatting. Had the website to which the Disputed Domain was forwarded contained,  
28 for example, a critique of Petronas's business practices, there would be no cybersquatting claim.

1 Forwarding, like any form of routing, merely delivers Internet users from a domain name to a  
2 website. By providing a forwarding service, Go Daddy in no way exercises the type of control  
3 over its registrants' intent and use of domain names that would justify imposing a landlord-like  
4 duty to monitor what is being done with the 8.2 million<sup>4</sup> domain names that are registered with  
5 Go Daddy and utilize Go Daddy's domain forwarding service. *Cf. Perfect 10*, 494 F.3d at 807  
6 (defendant credit card company, which provided critical support to website hosting infringing  
7 content, and which could have stopped or reduced infringing activity upon receipt of notice from  
8 plaintiff did not exercise the type of "direct control" over the infringing conduct to justify  
9 imposition of contributory trademark liability).

10 **4. Go Daddy Did Not Have Knowledge That the Registrant Was**  
11 **Cybersquatting**

12 Petronas's motion must also be denied because the evidence is insufficient to establish  
13 the "exceptional circumstances" that would justify imputing to Go Daddy knowledge that the  
14 registrant registered the Disputed Domain and utilized Go Daddy's forwarding service with a  
15 bad faith intent to profit from Petronas's trademark. Petronas relies upon the "knew or should  
16 have known" standard applied in the context of traditional contributory trademark infringement  
17 claims. *See* Pl. Br. at 9 (citing *Tiffany*, 600 F.3d at 109). But while it might make sense to  
18 require the operator of an on-line marketplace to review sales listings once provided with notice  
19 of specific listings that are claimed to be offering counterfeit goods, in the same way that a flea  
20 market operator must police a vendor once provided with notice that such vendor is selling  
21 infringing goods, a duty to investigate a claim of cybersquatting cannot be triggered by mere  
22 notice from a trademark owner. For this reason, as set forth *supra* at 16, district courts have  
23 uniformly adopted a heightened standard of "exceptional circumstances." Under this standard, a  
24 domain name registrar is not generally expected to ascertain the good or bad faith intent of its  
25 registrants. *Ford*, 177 F. Supp. 2d at 647.

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28 

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<sup>4</sup> Roling, ¶ 13.



1 Further, mere notice from a trademark owner of alleged cybersquatting is not enough to  
2 trigger a duty to investigate. *See id.*; *Solid Host*, 652 F. Supp. 2d at 1116. This is because  
3 cybersquatting, unlike the sale of counterfeit goods, is not easily detectible: “In general,  
4 cybersquatting is less easily detected than standard trademark infringement, both because it  
5 involves the consideration of intent and because it is less ‘transparent’ than ‘handbags labeled  
6 Louis Vuitton and Gucci, cheaply made, lined with purple vinyl, and sold by itinerant peddlers at  
7 bargain-basement prices.” *Solid Host*, 652 F. Supp. 2d at 1117 (quoting *Fare Deals, Ltd. v.*  
8 *World Choice Travel.com, Inc.*, 180 F. Supp. 2d 678, 691 (D. Md. 2001)).

9 Here, the evidence presented by Petronas does not come close to the type of “exceptional  
10 circumstances” that might trigger a duty by a registrar to investigate an allegation of  
11 cybersquatting. Petronas merely notified Go Daddy that the Disputed Domain was linked to a  
12 “mirror” of the website to which the first domain name disputed by Petronas had been linked  
13 (APP155), and provided Go Daddy with information identifying the registrant and reflecting that  
14 Petronas owned rights in the mark “PETRONAS” (APP092-95). From this information, Go  
15 Daddy could not possibly have evaluated all nine of the factors set forth in the ACPA to  
16 determine whether cybersquatting had occurred.

17 Petronas suggests that upon receipt of notice from a trademark owner, a domain name  
18 registrar should be required to scour its own records and review files related to other domain  
19 name disputes. *See* Pl. Br. at 11. But even the case Petronas relies upon makes clear that for  
20 there to be any duty to investigate, the trademark owner has the burden to submit “sufficient  
21 evidence of a violation.” *Solid Host*, 652 F. Supp. 2d at 1116. No court has imposed the type of  
22 duty to investigate that Petronas asks this Court to impose. Additionally, the traditional  
23 contributory infringement cases make clear that the generalized knowledge Go Daddy may have  
24 had based upon its experience in handling other trademark claims, *see* Pl. Br. at 12, is  
25 insufficient to impute to Go Daddy knowledge of specific infringing activity. *See Tiffany*, 600  
26 F.3d at 107 (“For contributory trademark infringement liability to lie, a service provider must  
27 have more than a general knowledge or reason to know that its service is being used to sell  
28 counterfeit goods.”).

1 Finally, Go Daddy did not “ignore” and was not “willfully blind” to Petronas’s trademark  
2 claim. Go Daddy acknowledged receipt of the claim, explained that disputes over content hosted  
3 by third parties had to be addressed to the registrant or operator of the website, referred Petronas  
4 to the UDRP as the typical means of resolving domain name disputes, and, as a courtesy,  
5 provided Petronas with information about the host of the website. APP091-92. Requiring  
6 domain name registrars to do anything more in the short period of time in which it takes for a  
7 trademark owner to obtain a transfer order (here it took Petronas less than two months from the  
8 filing of an *in rem* proceeding) would unnecessarily impose a tremendous burden on registrars,  
9 and vitiate the highly successful process for dealing with domain name disputes set forth in the  
10 UDRP. For this reason, the district court in *Lockheed II* recognized that

11 [s]heer volume alone would prohibit defendant performing the role plaintiff would  
12 assign. Defendant simply could not function as a registrar...if it had to become  
13 entangled in, and bear the expense of, disputes regarding the right of a registrant to  
14 use a particular domain name. . . . The reason the UDRP was developed was to  
provide the mechanism to resolve these disputes. Not only would imposing  
plaintiff’s scheme render the UDRP nugatory, it would cause the domain name  
registration system in its entirety not to be feasible.

15 *Lockheed II* at 655.

16 **IV. CONCLUSION**

17 For the foregoing reasons, Go Daddy respectfully requests that the court deny Petronas’s  
18 motion for summary judgment in its entirety.

19  
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WILSON SONSINI GOODRICH & ROSATI  
PROFESSIONAL CORPORATION

21  
22  
23 By: /s/ John L. Slafsky  
JOHN L. SLAFSKY  
24 DAVID L. LANSKY  
HOLLIS BETH HIRE  
25 jslafsky@wsgr.com  
dlansky@wsgr.com  
26 hhire@wsgr.com

Attorneys for Defendant  
GODADDY.COM, INC.

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